

§ 76.15

28 CFR Ch. I (7–1–15 Edition)

§ 76.15 *Ex parte* communications.

(a) *Generally.* The Judge shall not consult with any party, attorney or person (except persons in the office of the Judge) on any legal or factual issue unless upon notice and opportunity for all parties to participate. No party or attorney representing a party shall communicate in any instance with the Judge on any matter at issue in a case, unless notice and opportunity has been afforded for the other party to participate. This provision does not prohibit a party or attorney from inquiring about the status of a case or asking questions concerning administrative functions or procedures.

(b) *Sanctions.* A party or participant who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanctions. An attorney who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to sanctions, including, but not limited to, exclusion from the proceedings.

§ 76.16 Disqualification of a Judge.

(a) When a Judge deems himself or herself disqualified to preside in a particular proceeding, such Judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer for the district in which the case is brought or, if there is no Chief Administrative Hearing Officer, to the Attorney General.

(b) Whenever any party shall deem the Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of a Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer or the Attorney General shall refer the matter to another Judge for further proceedings.

(d) If the Judge denies a motion to disqualify, the Attorney General may

determine the matter only as part of the Attorney General's review of the initial decision on appeal, if any.

§ 76.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be represented, advised and accompanied by an attorney at law who is a member in good standing of the bar of the District of Columbia or of any state, territory or commonwealth of the United States;

(b) Participate in any conference held by the Judge;

(c) Conduct discovery in accordance with 28 CFR 76.18 and 76.21;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral argument at the adjudicatory proceeding as permitted by the Judge; and

(h) Submit a written brief and a proposed final order after the hearing.

§ 76.18 Authority of the Judge.

(a) The Judge shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Judge has the authority to:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas in accordance with 21 U.S.C. 875 and 876 requiring the attendance of witnesses and the production of documents at dispositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;